IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7766 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MERAMBHAI GOVINDBHAI

Versus

DIVISIONAL CONTROLLER

Appearance:

MR MUKESH H RATHOD for Petitioner

NOTICE SERVED for Respondent No. 1

MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/08/2001

ORAL JUDGEMENT

#. The petitioner-workman had raised industrial dispute which was referred to the Labour Court, Rajkot and was numbered as Reference LCR No.1384/89. The concerned workman had prayed for reinstatement in service with full

back-wages. The petitioner-workman was serving as Conductor and was removed from service after due inquiry on the ground that he has not issued certain tickets to the passengers. It is proved in the inquiry that the petitioner had not issued four tickets in spite of the fact that he has collected the amount for the same from the passengers, and therefore, the said charge having been proved in the inquiry, he was removed from service. The Labour Court, after considering the evidence on record, came to the conclusion that the aforesaid charge against the petitioner-workman is proved and that he has not issued four tickets to the passengers in spite of the fact that he has collected the amount from the passengers. It is also required to be considered that the petitioner-workman himself has admitted that after collecting the fair, he has not issued the tickets. In view of this clear admission of the petitioner-conductor, the Inquiry Officer came to the conclusion that the charge has been proved. The Labour Court has also considered the said aspect at page 18 of the award. It is required to be noted that the departmental inquiry was properly held and ultimately the charge of defalcation is proved in the inquiry and that the Labour Court has also came to the conclusion that the charge against the petitioner-workman is proved. This Court cannot reappreciate the evidence in a petition which is in the nature of a petition under Articles 226 and 227 of the Constitution. It is required to be noted that the Labour Court has also considered the Default Card. In the past also, it was found that the petitioner-workman had not issued the ticket to one passenger and his one increment was withheld for six months for the said misconduct. After considering the evidence on record, the Labour Court came to the conclusion that the punishment of removal cannot be said to be excessive, and therefore, the order of removal was not disturbed by the Labour Court.

#. Mr.Jhaveri has relied upon the judgment in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd) Vs. Secretary, Sahakari Noukarara Sangha reported in (2000)7 SCC 517 wherein the Apex Court has held that if the delinquent employee is dismissed on the charge of misappropriation and if that charge is proved in the domestic inquiry, such proved case of misappropriation does not call for any sympathy and the punishment of dismissal was found to be justified and the order of reinstatement was set aside.

#. Considering the facts and circumstances of the case as well as considering the reasonings of the Labour

Court, I do not think that the Labour Court can be said to have committed any error of law or of jurisdiction, much less any error apparent on the face of the record. In that view of the matter, I do not find any substance in this petition and the same deserves to be dismissed. The petition stands dismissed accordingly. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)
(pathan)